IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

Crl.Rev.Pet.No. 416 of 1999(C)

CC.12/1997 of JUDL. MAGISTRATE OF FIRST CLASS COURT, WADAKKANCHERY
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REVN. PETITIONER:

BALAN,
S/O. NAMBRATH THEKKERE KUNHAPPAN,
PARLIKKAD VILLAGE AND DESOM,
THALAPPILLY TALUK, THRISSUR DIST.

BY ADV. SRI.N.P.SAMUEL

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE ASST. SUB INSPECTOR
OF POLICE, WADAKKANCHERRY,
HEREIN REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. THOMAKUTTY,
S/O. DEVASSY, PARLIKKAD VILLAGE,
PARLIKKAD DESOM, TALAPPILLY TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU
SRI.S.R.MANOJ
SRI. C.M. KAMMAPPU, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

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CRL. R.P. NO. 416 OF 1999

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Dated this the 19th day of March 2007

O R D E R

The revision petitioner is the defacto complainant in C.C. No. 12/1997 who was allegedly beaten with the bamboo stick by the accused on 24.09.1996. He also sustained injuries on the right cheek and ear. The court below disposed of the matter acquitting the accused highlighting the contradiction in the version of PW1, the injured in the FI statement that he was attacked with a chopper. It is pointed out that the wound certificate was not marked nor was the doctor examined. It is also pointed out that the evidence of other witnesses have not been considered.

2. On a consideration of the judgment of the court below I find that the wound certificate was not marked although steps have been taken against the doctor as can be seen from the proceedings paper. It is also seen that even show cause notice was issued to the Superintendent of Medical College Hospital but thereafter the further steps were abruptly stopped and the evidence was closed. The counsel for the respondent has relied on the decision reported in **Jagannath Choudhary v. Ramayan Singh & another** (2002 (5)

SCC 659) to stress the point that revision at the instance of the defacto complainant can be entertained only in exceptional cases where the miscarriage occasioned on account of irregular procedure etc and where material evidence has been overlooked. I find that in the instant case, the wound certificate ought to have been marked at least through the Investigating Officer. It is submitted that the defacto complainant sustained serious injuries and was referred to the Medical College Hospital and he underwent inpatient treatment.

3. In the circumstances, the order of the court below is set aside. The court below is directed to see that the wound certificate is got marked through the doctor and if the doctor is not available through the Investigating Officer and to dispose of the matter afresh untrammeled by any observations contained in the order of this Court. The accused shall appear before Judicial First Class Magistrate, Wadakkanchery on **24.04.2007.**

The Crl. R.P is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

RV